

14876
RECORDATION NO. _____ Filed 1425

JAN 8 1986 - 11 45 AM

INTERSTATE COMMERCE COMMISSION
January 8, 1986



**Chessie
System
Railroads**

Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216-623-2200

HAND DELIVERED

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., NW
Washington, DC 20423

Attention: Recordation unit

Dear Mr. Bayne:

6-008A090

No.

Date JAN 8 1986

Fee \$ 10.00

ICC Washington, D.C.

Enclosed are four executed counterparts of an Agreement dated as of December 20, 1985, between Thrall Car Manufacturing Company and The Chesapeake and Ohio Railway Company. This Agreement is a primary document and constitutes an interim user agreement, allowing use of the equipment described below pending establishment of permanent financing. The names and addresses of the parties are as follows:

Bailor: Thrall Car Manufacturing Company
26 State Street
Chicago Heights, IL 60411

Bailee: The Chesapeake and Ohio Railway Company
3200 Terminal Tower
Cleveland, OH 44101

The equipment covered by the above documents consists of ninety-seven (97) fully-enclosed bi-level auto racks, to bear Rack Nos. B3243-B3339, inclusive. The equipment will be marked "The Chesapeake and Ohio Railway Company" or "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Also enclosed is a draft in the amount of \$10.00 representing the required recording fee.

07047

THE UNITED STATES OF AMERICA

JAN 9 1981

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON

EDUCATION AND THE LABOR FORCE

HEARINGS ON THE
NATIONAL COMMISSION ON
EXCELLENCE IN EDUCATION
AND THE LABOR FORCE

WEDNESDAY, JANUARY 8, 1981

10:00 AM

STATE OF THE UNION
ADDRESS BY PRESIDENT
REAGAN
JANUARY 8, 1981
THE WHITE HOUSE
WASHINGTON, D.C. 20503

THE PRESIDENT
THE VICE PRESIDENT
THE SPEAKER OF THE HOUSE
THE SENATE

THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE

THE SECRETARY OF EDUCATION
THE SECRETARY OF LABOR
THE SECRETARY OF HEALTH, EDUCATION AND WELFARE
THE SECRETARY OF ENERGY

THE SECRETARY OF COMMERCE
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF AID TO INTERNATIONAL DEVELOPMENT

Mr. James H. Bayne
January 8, 1986

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC §11303, as currently administered, you are hereby requested duly to file one (1) of the enclosed counterparts for record in your office and to return the remaining three (3) copies to me.

Sincerely,

A handwritten signature in cursive script, reading "Louis Recher", with a long horizontal flourish extending to the right.

Louis Recher
Assistant General Solicitor

LR/mrt

Interstate Commerce Commission
Washington, D.C. 20423

1/13/85

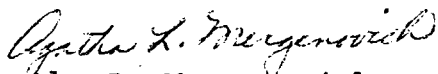
OFFICE OF THE SECRETARY

Louis Recher
Chessie System Railroads
Terminal Tower
P.O.Box 6419
Cleveland, Ohio 44101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/8/86 at 11:45am , and assigned recordation number(s). 14876

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

EXECUTED IN 5 COUNTERPARTS

OF WHICH THIS IS NO. 1

14876
RECORDATION NO. _____ FORM 1425

JAN 8 1986 -11 45 AM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of December 20, 1985

between

THRALL CAR
MANUFACTURING COMPANY

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

97 Fully-Enclosed Bi-Level Auto Racks

THIS AGREEMENT, dated as of December 20, 1985, between THRALL CAR MANUFACTURING COMPANY, a Delaware corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O):

WITNESSETH:

Pursuant to a Letter Order received from C&O dated November 4, 1985, which Letter Order is made a part hereof by reference, the Manufacturer has agreed (among other things) to construct, at its Cartersville, Georgia plant, and to deliver to C&O at Cartersville, Georgia, and C&O has agreed to accept and pay for, ninety-seven (97) fully-enclosed bi-level auto racks (Auto Racks), to bear rack numbers B3243-B3339, inclusive.

C&O intends to finance the purchase of the Auto Racks from the Manufacturer pursuant to some one or more permanent forms of financing, but deliveries of the Auto Racks are scheduled to begin on or about January 6, 1986, and C&O will not have completed said financing arrangement(s) by that time. C&O represents that such financing arrangement(s) will be established, however, on or before April 30, 1986. C&O, in order that it may use (or may permit its subsidiary, The Baltimore and Ohio Railroad Company (B&O), to use) the Auto Racks pending establishment of such financing arrangement(s), desires to have temporary custody and possession of the Auto Racks upon their completion, solely as a bailee of the Auto Racks, and the Manufacturer is willing to grant such temporary

custody and possession to C&O upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Auto Racks as of the date each of them is delivered to C&O at Cartersville, Georgia, for the period ending on the earlier of April 30, 1986, or the date of establishment of said financing arrangement(s). On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Auto Rack, C&O's representative shall execute a certificate of acceptance acknowledging the receipt of delivery of each such Auto Rack under this Agreement. Title to the Auto Racks shall remain in the Manufacturer and C&O's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O shall, without expense to the Manufacturer, promptly cause a Financing Statement to be filed in Ohio pursuant to the requirements of the Uniform Commercial Code as in effect in said State. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Auto Racks.

C&O agrees to permit no liens of any kind to attach to the Auto Racks; and that it shall:

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Auto Racks or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Auto Racks by C&O (or B&O) during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O shall, at its own expense, keep and maintain the Auto Racks in good order and running condition and shall, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Auto Racks which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Auto Rack to C&O under this Agreement, each such Auto Rack shall be numbered with a rack number as hereinbefore indicated. C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Auto Racks. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Auto Rack, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Auto Racks, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or implied by the Letter Order. In the event the Manufacturer shall assign its rights to receive the payments for the Auto Racks, and C&O shall receive written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O for the Auto Racks or in connection therewith shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any such assignment by the Manufacturer of its rights to receive any such payments, the rights of such assignee to such payments as may be assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Auto Racks, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by

C&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Auto Racks, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Auto Racks in accordance with the terms of the Letter Order.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Attest:
(CORPORATE SEAL)

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

By: Lynne B. Klop
Assistant Secretary

By: Richard B. Allen
Vice President

App'd. as to Form

LR
A. G. S.

Attest:
(CORPORATE SEAL)

THRALL CAR
MANUFACTURING COMPANY

By: P. L. Leibel
Assistant Secretary

By: J. M. Higgins
Vice President

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 30th day of December, 1985, before me personally appeared RICHARD B. ALLEN, to me personally known who, being by me duly sworn, says that he is Vice President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

(NOTARIAL SEAL)

Louis Recher
LOUIS RECHER, Attorney
Notary Public - State of Ohio
My Commission has no expiration date.
Section 147.03 R.C.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 6th day of January, 1986, before me personally appeared J. M. Higgins, to me personally known who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

(NOTARIAL SEAL)

Lynda Clayton
Notary Public
My Commission Expires:

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. APR. 8, 1989
ISSUED THRU ILL. NOTARY ASSOC.